

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

AMERICAN ZURICH INSURANCE
COMPANY

PLAINTIFF

v.

Civil Action No. 4:21-cv-00155-GHD-DAS

TOMMIE FAIRLEY

DEFENDANT

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

Presently before the Court is the Plaintiff's motion for default judgment against the Defendant [9]. Upon due consideration, the Court finds that the motion should be granted.

On November 22, 2021, the Plaintiff filed a Complaint against the Defendant, seeking a declaratory judgment regarding a Builders Risk Policy that the Defendant, who was a licensed general contractor performing construction services, obtained from the Plaintiff [1]. The sole relief sought in the Complaint is a declaration that the subject policy is void under Mississippi law and thereby rescinded [1]. The Defendant was served with process on December 6, 2021, but has failed to plead or otherwise defend this action [3]. Accordingly, upon motion by the Plaintiff, the Clerk of Court entered an Entry of Default against the Defendant on January 21, 2022 [6]. The Plaintiff has now filed the present motion seeking to have the Court enter a default judgment in its favor [9], to which the Defendant has failed to respond.

Rule 55 of the Federal Rules of Civil Procedure sets forth the conditions upon which default may be entered against a party, as well as the procedure to seek the entry of default judgment. Fed. R. Civ. P. 55. "The Fifth Circuit requires a three-step process for securing a default judgment." *Chevron Intell. Prop., L.L.C. v. Mashiana*, No. 4:10-CV-352, 2011 WL 2637372, at *1 (E.D. Tex. June 10, 2011) (citing *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir.1996)). A default occurs when the defendant fails to plead or otherwise respond to the complaint within the

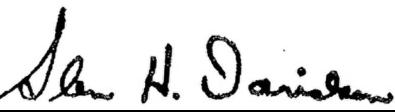
time required by Rule 12 of the Federal Rules of Civil Procedure. *Id.* (citing Fed. R. Civ. P. 55(a); *New York Life Ins.*, 84 F.3d at 141). The clerk may then enter an entry of default when default is established by affidavit. *Id.* (citing Fed. R. Civ. P. 55(a); *New York Life Ins.*, 84 F.3d at 141). After an entry of default, the plaintiff may seek a default judgment. *Id.* (citing Fed. R. Civ. P. 55(b)). The Plaintiff has satisfied these requirements in relation to the Defendant.

Because the Defendant has failed to timely answer or otherwise plead in the instant litigation, the well-pleaded allegations in the Complaint are taken as admitted. *Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *CENTRIA v. Alply Architectural Bldg. Sys., LLC*, No. 4:11-CV-79-CWR-LRA, 2012 WL 73235, at *4 (S.D. Miss. Jan. 10, 2012) (citation omitted).

Because the Plaintiff seeks solely declaratory relief, the Court finds that a separate hearing to determine the scope of relief to which the Plaintiff is entitled is not required. Fed. R. Civ. P. 55(b). Accordingly, a separate order granting the Plaintiff's Complaint for Declaratory Judgment shall be entered.

THEREFORE, it is hereby ORDERED that the Plaintiff's Motion for Default Judgment [9] is GRANTED. The Court will enter a separate Order and Judgment Granting the Plaintiff's Complaint for Declaratory Judgment.

SO ORDERED, this, 15th day of March, 2022.



SENIOR U.S. DISTRICT JUDGE